

## EDITORIAL NOTES

### PHYSICIAN'S RIGHTS.

Many questions are propounded to the Secretary in regard to the rights and duties of physicians and their relations to the public and to their patients. It is singular but nonetheless true, that not alone the lay public generally, but many physicians, seem to think that they are more or less in the nature of "public carriers"; innkeepers, etc.; that they must respond to a call or must treat a sick person if sent for to do so. This is not at all the case. Quite the contrary. Nor is this definite statement merely a matter of opinion as these points have been settled in court and the decisions sustained. It does not matter whether the person sending for a physician is or is not able to pay him a proper compensation; nor does it matter what the circumstances are, the urgency of the call, inability to get another physician, etc. The courts have ruled in one case at least, that even when money was tendered, no other physician could be reached in time and the patient died as the result of a physician's flat refusal, without stated reason, to visit and treat or prescribe for this sick person, the physician was in no way liable and the suit against him was dismissed. Any physician may elect whether or not he will undertake to exercise his professional ability and accept the offered employment in any given case. No one and no law compel him to extend his professional services, either with or without compensation, unless he wishes to do so.

### PATIENT'S RIGHTS.

A physician having accepted a call to attend a sick or injured person is, however, in a different case. His acceptance of the call and his treating the patient are taken by the courts to mean the undertaking of an implied contract based on ordinary reason and common justice. The physician, by accepting the call, indicates that he holds himself out to have ordinary skill in his profession. The law does not expect every physician to have unusual ability; merely ordinary skill and ability of the general average of others in a like calling in his vicinity or a similar one. Furthermore, the physician undertakes to make a proper number of visits and to see that his best judgment guides him in making visits and in the time of dismissing his patient. Some of these points are well brought out in the instructions given by the court to the jury, and later sustained by the supreme court of that state, in a suit based upon alleged negligence in one of the common cases of fracture of the arm. The plaintiff patient claimed that the physician took off the dressings and dismissed him before he should properly have done so, which contention was not agreed to by the jury; the physician won his case.

"If a physician or surgeon be sent for to attend a patient, the effect of his responding to the call, in the absence of a special agreement, will be an engagement to attend the case as long as it needs attention, unless he gives no-

tice of his intention to discontinue his services, or if dismissed by the patient; and he is bound to exercise reasonable and ordinary care and skill in determining when he should discontinue his treatment and services. If you find from the evidence that the condition of the plaintiff's arm is due to his having been dismissed when he ought not to have been dismissed, the defendant would be liable, unless the evidence further satisfies you that the defendant, in dismissing him, if he did dismiss him, used ordinary and reasonable care and skill in determining when to dismiss him; and, if he dismissed him under a mistake of judgment, he would be liable, and you should hold him liable unless you find from the evidence that, in framing up his mind when to dismiss him he exercised reasonable and ordinary care and skill, and had regard for and took into account the well settled rules and principles of medical and surgical science."

### TERMINATION OF SERVICES.

While it is undisputedly true that a physician is not required to nor can he be made to attend a sick or injured person, if he does undertake such services he, as we have shown, enters into an implied contract based on ordinary common sense and justice. He may terminate such a contract, or the patient may terminate it, but in certain recognized ways. In all such common, implied contracts, there are certain well recognized fundamental considerations, as for instance that either party thereto may terminate the arrangement at his pleasure, but that the party so doing must give the other party to the contract reasonable notice and reasonable time to make other arrangements. The patient has every right to dismiss his attendant physician and call another, or any number of others, if he desires so to do. This is a point frequently overlooked or not considered by many physicians who seem to look upon their patients as their own private property. Courts always construe these common undertakings in the light of the circumstances. Just what would be considered reasonable notice of a physician to a patient that the physician's services were to be terminated, would depend upon the facts in the case. If a physician became annoyed at his patient and left him in a huff in a critical condition and without giving him time to secure the services of another physician, he would undoubtedly be held liable for damages. A celebrated case of that kind is the suit for damages against Dr. Flood of San Francisco, in which a judgment for \$2,000 against Dr. Flood was sustained by the Supreme Court of California in 1901. Dr. Flood undertook to confine a woman and left at midnight, abruptly, because the woman would not keep still while he attempted to apply forceps. Dr. Flood was a very irascible, impatient man. The court, in its final decision, is very definite on this point of termination of services. It says:

"It is undoubted law that a physician may elect whether or not he will give his services

to a case, but, having accepted his employment, and entered upon the discharge of his duties, he is bound to devote to the patient his best skill and attention, and to abandon the case only under one of two conditions: First, where the contract is terminated by the employer, which termination may be made immediate; second, where it is terminated by the physician, which can only be done after due notice, and an ample opportunity afforded to secure the presence of other medical attendance."

It must be remembered that there is no distinction between a patient who pays and a patient who is receiving gratuitously the services of a physician; the obligation assumed by the physician is the same in either case and his duties to his patient are no less and no more in the one than in the other circumstance.

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#### APPLICANTS.

Several of the component county medical societies have adopted the plan of regularly sending in the names of applicants, to the office of the State Society, and awaiting a report from our office before considering any action upon such applications. It is a very wise thing to do, as the JOURNAL has remarked on more than one occasion, and the wisdom of this course was well shown last month when one county society was enabled to keep out a man who had been a notorious abortionist and grafter in another county. It is a very simple matter to send in such names and in many instances, as in the one just mentioned, it will save a good deal of trouble in the long run. We have found it unfailing, as the years go by and the records of physicians grow in the office of the Society, that when once a note of something unprofessional or crooked is made against a name, the list of such notations will grow longer and longer as the years pass. If we note that a physician has been mixed up in a coroner's case of abortion, even if there is not sufficient evidence to hold him on a criminal charge, soon or late another and similar incident will be recorded in his connection, and it sometimes happens that we find on such cards, eventually, "sentenced to San Quentin for — years." The unlicensed fakers and Chinese specialists are not the worst quacks by any manner of means; nor the most dangerous.

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#### JUNE MEETINGS.

The occurrence of many medical and allied society meetings during the middle and latter part of June will be more extensively noted in the next issue; they came so late in the month that not much could be done in the way of preparing material relating to them without holding back the JOURNAL too long. We did hold it up long enough to get in some notes in regard to the American Medical Association elections and matters of business, but that was about the best that could be done.

#### PHYSICIANS OF SAN FRANCISCO, PLEASE REGISTER!

The following letter received from the Secretary of the Board of Medical Examiners is self-explanatory and the JOURNAL is only too glad to publish the notice again; we have repeatedly, in the past, urged the physicians of San Francisco to register their licenses with the county clerk, as required by law!

"We are informed by an individual who is checking up the physicians in this county that less than fifty per cent. of those registered with the County Clerk prior to the fire have re-registered in accordance with the Medical Practice Act.

"It occurs to me that it would be advisable to insert in the JOURNAL a notice calling the attention of the profession to this feature of the law.

"We are well aware that you have endeavored both through telephonic communication, personal correspondence and through the columns of the JOURNAL to impress upon the profession the necessity of registering in the county in which each individual may be practicing.

"Respectfully yours,

"C. B. PINKHAM, Secretary."

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#### FEDERAL CONVICTIONS.

The sentences awarded those who have up to date been convicted in the federal court for misuse of the mail in quack medical work, are as follows: Homer C. Edwards, M.D., one year in Alameda county jail; G. M. Freeman, M.D., one year in Alameda county jail and \$1,000 fine; C. M. Scott, M.D., \$400; C. A. Baxter, \$400; E. J. Rice, M.D., \$750; J. T. Burns, \$500; Donald Harris, \$400; H. J. Pierce, six months in the Alameda county jail. These men were all connected with different advertising institutions. It must be said for the credit of the Board of Examiners that "Dr. Morel," the Jordan Museum, the Globe Medical Dispensary and the Raymond Remedy Co., were all closed up before the federal authorities arrested and indicted these men.

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#### ILLEGAL PRACTITIONERS.

The Board of Medical Examiners is very desirous of discouraging the illegal practice of any form or method of the healing art, and to that end desires that our members individually or collectively as represented in the various county medical societies, will send in the names of any newcomers or of those concerning whom there is any doubt of being properly licensed. Communications on the subject may be sent to the Secretary of the State Society or to the Secretary of the Board of Examiners, Dr. C. B. Pinkham, Butler Building, San Francisco.